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09/746,719	12/22/2000	Ralph L. Anderson	03768/9382 (15031) KCX-22	1176

7590

09/30/2002

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 09/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/746719

Applicant(s)

Anderson et al.

Examiner

John Guarriello

Group Art Unit

1771

AS-5

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-23, 24-35 is/are pending in the application.
- ☐ Of the above claim(s) 1-23, 35 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 24-34 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 4
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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**DETAILED ACTION**

***Election/Restriction***

15. Restriction to one of the following inventions is required under 35

U.S.C. 121:

- I. Claims 1-23, drawn to method of making an absorbent article, classified in class 427, subclass 194.
- II. Claims 24-34, drawn to absorbent article, classified in class 442, subclass 71.
- III. Claim 35, drawn to indicator system, classified in class 8, subclass 495.

16. The inventions are distinct, each from the other because:

17. Inventions I and II, III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant

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case the product as claimed can be made by another and materially different process whereby the indicator system is applied on one surface of a layer.

18. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

19. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

20. During a telephone conversation with Neil Jones on 8/23/2002 a provisional election was made with traverse to prosecute the invention of Group II, claims 24-34. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-23, Group I and Group III, claim 35 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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21. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 112***

22. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

23. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 24, it is not clear what the correct dependency is since this claim depends upon a non-elected claim, claim 24 is directed to a wiper made of an absorbent article with an indicator.

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***Claim Rejections - 35 USC § 102***

24. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 25-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Fellows 4,678,704.

Fellows describes an impregnated fabric to which an indicator dye has been applied, (see abstract). Fellows describes the fabric may be woven, on nonwoven which can be a wiping cloth, (see abstract, column 1, lines 5-10; lines 36-51). Fellows describes disinfectant which can be activated, (column 2, lines 22-34). Fellows describes cationic starches (corresponding to swellable polymer) which can thicken or swell, (column 2, lines 39-45). Fellows describes additives can be added, (column 2, lines 1-6). Fellows describes the essential limitations of the claimed invention.

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***Claim Rejections - 35 USC § 103***

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claims 25-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2 211 092 in view of Dehnel 4,392,908.

GB'092 describes a wipe with a flexible substrate which a water insoluble active agent is added with an indicator dye, (see abstract). GB'092 describes flexible substrates like wipes, cloths, woven and nonwoven fabrics, (page 1, lines 13-19). GB'092 describes the indicator dye to the substrate, (page 2, lines 1-6; lines 21-32). GB'092 describes the flexible substrates as fibers, (page 3, lines 13-18). GB'092 is silent about a water swellable polymer particles.

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Dehnel describes a water absorbent article with water swellable material such polymer particles, (column 1, lines 4-11; column 2, lines 38-44; lines 51-53).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the water swellable polymer of Dehnel in the fabric of GB'092 motivated with the expectation that <sup>it</sup> ~~there~~ would be an improvement absorbence of the wiper.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

September 16, 2002



TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700